REMARKS

The claims now in the case are claims 25-33 and 37-48. The independent claims are 25, 41 and 48.

In the non-final Office Action of March 24, 2009, the Examiner disregarded distinctions Applicant had pointed to with regard to the '158 reference having additional layers beyond the claimed one's as irrelevant, "as the current claim limitations do not exclude additional layers as the claims are in the 'comprising' or open format." (3/24/2009 Office Action at page 7).

Applicant has amended independent claims 25, 41, and 48 to change the transition phrase to "consisting essentially of". As the Examiner appreciates, this transition phrase limits the scope of the claim to the specified steps or materials and those that do not materially affect the basic and novel characteristic(s) of the claimed invention. *In re Herz*, 537 F.2d 549, 551-552, (CCPA, 1976), MPEP § 2111.03. Thus, the previously presented arguments about the '158 reference using a "multiplicity of layers", col. 3/ll. 6-7, are no longer irrelevant (see also col. 3/ll. 31-38) and must be taken into account.

As the Examiner must appreciate, elimination of complexity can be, and sometimes is the essence of invention. Less complex items are less expensive to build and less susceptible to failure.

The Examiner has ignored the Rule 132 Declaration of record and indicated it was not persuasive and in response points out the inherent properties of wool. However, the inherent properties of wool are no basis for ignoring the Rule 132 Declaration of co-inventor Gordon. The Gordon Declaration clearly overcomes any *prima facie* case of obviousness. He points out the inner layer is formed of materials with specific parameters (not indicated as present in the art) to allow it to provide a thermal barrier and hence allow the thermal benefits and protection.

There is no indication that inner most of the multiple layers of Pogorski '158 would have these properties. Indeed, the testing done by the inventor on various materials demonstrates that all do not have similar properties. This suit has been licensed worldwide (paragraph 20) and has been successful forming the basis of inventor's own company. It has received praises by others as evidenced by the articles and testimonials of customer users. Thus ignoring indicia of non-obviousness which are clearly established is not in line with *Graham v. Deere*, 383 US1 (1966) or 35 U.S.C. § 103 (subject matter "as a whole") or the recent *KSR* case requiring consideration of objective evidence and reasoning.

It is clear that the amendments to the claims and the change of the transitional clause eliminate the lack of novelty rejection. It is also clear that obviousness rejection when properly considered in light of the amendments to the claims and the secondary indicia of the Rule 132 Gordon affidavit should also be removed as either not a *prima facie* case or as overcome by the claim amendment and Rule 132 Declaration.

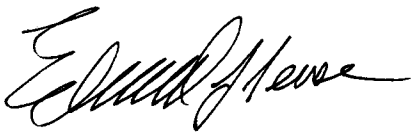
Applicant reminds the Examiner that in the November 2008 interview, the Examiner suggested adding structure to the claims. Applicant has done so, and has now narrowed the transition clause. In the event the Examiner feels a further interview would be helpful, he is requested to call the undersigned.

Please consider this a Request for two-month extension of time from June 24, 2009 to August 24, 2009 and charge Deposit Account No. 26-0084 the amount of $245.00 for this extension.

No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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